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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,073	06/09/2005	Takashi Asakura	AKA-0284	8913
23599 7590 12/27/2007 MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD. SUITE 1400 ARLINGTON, VA 22201			EXAMINER SOROUSH, ALI	
			ART UNIT 1616	PAPER NUMBER
			MAIL DATE 12/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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DEC 27 2007

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BLVD.
SUITE 1400
ARLINGTON VA 22201

In re Application of :
Takashi Asakura :
Serial No.: 10/538,073 : PETITION DECISION
Filed: January 9, 2005 :
Attorney Docket No.: AKA-0284 :

This is in response to the petition under 37 CFR 1.181, filed November 28, 2007, requesting withdrawal of the Finality of the Office action mailed October 1, 2007.

BACKGROUND

A review of the file history shows that the examiner mailed a first Office action on the merits to applicant on April 20, 2007, setting forth a rejection of claims 15 and 18-19 under 35 U.S.C. 103(a) as unpatentable over Ellis et al in view of Bruno. Claims 16-17 were indicated allowable. Claims 20-28 were withdrawn pursuant to a restriction requirement.

Applicant replied on July 20, 2007, by amending claims 15, 18 and 20, cancelling claims 21-22 and adding claim 29. The rejection of record was addressed and argued appropriately.

The examiner mailed a Final Office action to applicant on October 1, 2007, withdrawing the rejection of record in view of applicant's amendments. The examiner then set forth a new rejection of claims 15 and 18-19 under 35 U.S.C. 102(b), as anticipated by Saida et al (newly cited). Claims 16-17 were rejected under 35 U.S.C. 103(a) as unpatentable over Saida et al. The examiner justified Finality in view of applicant's amendments to the claims. (It is noted that claim 29 is indicated as rejected on the summary sheet, but not included in either of the rejections of record.)

Applicant filed this petition on November 28, 2007.

DISCUSSION

Applicant requests withdrawal of the finality of the Office action of October 1, 2007, on the basis that the amendments to claims, especially claims 16-17, did not justify making the action Final.

A review of claims 16-17 shows that these claims were allowed in the first Office action and were not amended in reply to the first Office action, but were rejected over a new reference. Although these claims are dependent claims the claim from which they depend was amended only to incorporate some of the limitations of claim 16 into it. Thus the scope of claims 16 and 17 did not change, although the scope of claim 15 from which they depend did. However, unamended claims 16 and 17 were rejected over a new reference which rejection could not have been caused by applicant's amendment of the claims since they were not amended. In view thereof the Finality of the Office action was not justified and is withdrawn.

DECISION

The petition is **GRANTED**.

The Office action mailed October 1, 2007, is redesignated a non-Final Office action and applicant remains under obligation to reply thereto within the time period specified or as extended under 37 CFR 1.136(a).

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number 571-273-8300.

A handwritten signature in black ink, appearing to read "Bruce M. Kisliuk", with a long horizontal flourish extending to the right.

Bruce M. Kisliuk
Director, Technology Center 1600